Supreme Court of the United States.

No. 56.—October Term, 1903.

The Pennsylvania Railroad Company, Plaintiff in Error, *vs.* William Hughes and Benjamin F. A. Fleming, trading as Hughes and Fleming.	In error to the Supreme Court of the State of Pennsylvania.

[December 7, 1903.]

The defendants in error brought suit in the Court of Common Pleas of Philadelphia against the Pennsylvania Railroad Company, to recover for injuries to a horse shipped by them from Albany in the State of New York to Cynwyd, in the State of Pennsylvania. The shipment was under a bill of lading of the New York Central and Hudson River Railroad Company, bearing date of August 10, 1900. It recited the receipt of the horse—

"for transportation from —— to destination, if on the said carrier's line of railroad otherwise to the place where said live stock is to be received by the connecting carriers for transportation to or toward destination, and that the same has been received by said carrier for itself and on behalf of connecting carriers, for transportation, subject to the official tariffs, classifications and rules of the said company, and upon the following terms and conditions, which are admitted and accepted by the said shipper as just and reasonable, viz:

"That said shipper, or the consignee, is to pay freight thereon to the said carrier at the rate of — per —, which is the lower published tariff rate, upon the express condition that the carrier assumes liability on the said live stock to the extent only of the following agreed valuation, upon which valuation is based the rate charged for the transportation of the said animals, and beyond which valuation neither the said carrier nor any connecting carrier shall be liable in any event, whether the loss or damage occur through the negligence of the said carrier or connecting carriers, or their employees or otherwise.

"If horses or mules—not exceeding one hundred dollars each."

The through rate of freight was not filled out in the blanks in the shipping receipt or the bill of lading, but was collected by the agent of the Pennsylvania Railroad Company at Cynwyd, and it appears was the reduced tariff rate usually charged on such shipments where the limited liability clause above recited is inserted. The shipper signed the bill of lading, which contained the following stipulations:

"Thomas Grady does hereby acknowledge that he had the option of shipping the above-described live stock at a higher rate of freight according to the official tariffs, classifications and rules of the said carrier and

connecting carriers, and thereby receiving the security of the liability of the said carrier and connecting railroad and transportation companies, as common carriers of the said live stock, upon their respective roads and lines, but has voluntarily decided to ship the same under this contract at the reduced rate of freight above first mentioned."

The agreement further provided:

"No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation."

Upon the trial the jury returned a verdict in favor of the plaintiff for $10,000 and judgment was rendered accordingly. The horse was transported in safety to the end of the line of the receiving carrier and delivered to the defendant company, and injured while the car in which he was shipped was standing on the track of the Pennsylvania Railroad Company in the city of Philadelphia, it being run into by heavily laden cars.

Upon appeal to the Supreme Court of Pennsylvania, the judgment was affirmed. (202 Pa. St. 222.)

Mr. Justice DAY delivered the opinion of the Court.

The right to review the judgment of the Supreme Court of Pennsylvania herein depends upon the proper assertion of a right or privilege under the Federal Constitution or statutes which was denied to the plaintiff in error by the adverse holding of the State court.

Upon the trial in the Common Pleas Court, it was contended that the special contract above recited limited the recovery of the plaintiff to the sum of one hundred dollars. The court refused to so charge, but, holding that the policy and law of Pennsylvania, as declared by her her courts of last resort, did not permit such limitations on the liability of common carriers, left to the jury to determine the value of the horse and the question of the negligence of the defendant.

In view of being carried to the Supreme Court of Pennsylvania, two errors were assigned to the refusal of the court to charge:

"1. That it was lawful in the State of New York for the carrier to limit its liability by a special contract for an injury resulting from its negligence; that said contract having been for a through consignment from Albany to Cynwyd, a place within this State, said contract must be considered in its entirety, and is incapable of divisibility; that said contract having stipulated for an agreed valuation of the stock shipped, the parties must be governed by its terms throughout the entire route, as said contract must be interpreted and enforced here by the law of the place where it

was made, and within which State it is partly performed; and that consequently the plaintiff is not entitled to recover in excess of the valuation agreed upon by the parties at the time of shipment.

"2. That the plaintiff is not entitled to recover in excess of $100."

Neither of these assignments of error presents a Federal question in such sense as to give this court jurisdiction to review the judgment of the State court under section 709 of the Revised Statutes of the United States. Nothing is better settled in Federal jurisprudence than that the jurisdiction of this court in such cases depends upon the assertion of a right, title, privilege or immunity under the Federal Constitution or laws set up and denied in the State courts. (*Beals* v. *Cone*, 188 U. S. 184.)

The first error assigned in the Common Pleas Court raised the question as to the law of the contract. It does not assert that any Federal right was invaded or denied. It seems to have been conceded at the trial that the law of the State of New York where the contract was made permitted the making of a contract limiting the liability of the carrier to the agreed valuation in consideration of the lower freight rate for carriage, the shipper having the opportunity to have the larger liability for the value of the goods if the higher rate of freight for carriage was paid. This rule also prevails in the courts of the United States, (*Hart* v. *Railroad*, 112 U. S. 331,) wherein it was held that a contract fairly made and signed by the shipper, agreeing on a valuation of the property carried, with a rate of freight based on such valuation, on the condition that the carrier assume liability only to the extent of such agreed valuation, in case of loss by the negligence of the carrier, will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier is responsible and the freight received, and of protecting the carrier against extravagant valuations. But this is not a question of Federal law wherein the decision of the highest Federal tribunal is of conclusive authority. In *Grogan* v. *Adams*, (114 Pa. 523,) the Supreme Court of Pennsylvania expressly declined to follow the rule laid down in *Hart* v. *Railroad*, adhering to its own declared doctrine denying the right of a common carrier to thus limit its liability for injuries resulting from negligence. The cases are numerous and conflicting, different rules prevailing in different States. The Federal courts in cases of which they have jurisdiction will doubtless continue to follow the rule of the Hart case, but the highest court of Pennsylvania may administer the common law according to its understanding and interpretation of it, being only amenable to review in the Federal Supreme Court where some right, title, immunity or privilege, the creation of the Federal power, has been asserted and denied. (*Bethel* v. *Demaret*, 10 Wall. 537; *Delmas* v. *Ins. Co.*, 14 Wall. 666; *Ins. Co.* v. *Hendren*, 92 U. S. 287; *United States* v. *Thompson*, 93 U. S. 586.)

In the Supreme Court of Pennsylvania a further assignment of error was made as follows:

"III. The learned court below erred in entering judgment in conflict with the act of Congress of February 4, 1887, entitled 'An act to regulate commerce.' Section 1 of said act clearly provides that where the transportation is from one State to another, under a through bill of lading, its provisions shall be carried out, unless it be in conflict with a statute of the State in which it may be performed, or in conflict with the policy of the United States as laid down in the Federal courts, and that, as the contract was valid in the place where made, and, as there is no statute in Pennsylvania prohibitory of an agreed valuation to establish a rate, and as it is consistent with the policy of the United States as declared by the Federal courts, the judgment should have been for the valuation mentioned in the contract."

Of this assignment of error, Mr. Justice Potter, delivering the opinion of the Supreme Court of Pennsylvania, said:

"The third assignment of error suggests that the entry of judgment is in conflict with the interstate commerce act of Congress. This seems to be an afterthought, as there is no indication in the record that this question was raised or considered in the court below. It is not apparent how the act can have any application to this case. It contains nothing bearing upon the validity of a contract limiting the liability of a railroad for loss or injury caused by negligence. The object of the act seems to me to be to secure continuous carriage and uniform rates, and to compel the furnishing of equal facilities. We cannot see that the entry of judgment in this case interferes in any way with the legitimate exercise of interstate commerce."

Upon the authority of *Missouri, Kansas City &c. R. Co.* v. *Elliott,* (184 U. S. 533,) it may be admitted that the question of the decision of the State court being in contravention of the legislation of Congress to regulate interstate commerce, was sufficiently made, and the adverse decision to the party claiming the benefit of that act, gives rise to the right of review here. In refusing to limit the recovery to the valuation agreed upon, did the State court deny to the company a right or privilege secured by the interstate commerce law? It may be assumed that under the broad power conferred upon Congress over interstate commerce as defined in repeated decisions of this court, it would be lawful for that body to make provision as to contracts for interstate carriage, permitting the carrier to limit its liability to a particular sum in consideration of lower freight rates for transportation. But upon examination of the terms of the law relied upon we fail to find any such provision therein. The sections of the interstate commerce law relied upon by the learned counsel for plaintiff in error, (24 U. S. Stat. 379–82; 25 U. S. Stat. 855,) provide for equal facilities to shippers for the interchange of traffic; for non-discrimination in freight rates; for keeping schedules of rates open to public inspection; for posting the same in public places, with certain particulars as to charges, rules

and regulations; for the publication of joint tariff rates for continuous transportation over one or more lines, to be made public when directed by the Interstate Commerce Commission; against advances in joint tariff rates except after ten days' notice to the commission; against reduction of joint tariff rates except after three days' like notice; making it unlawful for any party to a joint tariff to receive or demand a greater or less compensation for the transportation of property between points as to which a joint tariff is made different than is specified in the schedule filed with the commission; giving remedies for the enforcement of the foregoing provisions, and providing penalties for their violation; making it unlawful to prevent continuous carriage, and providing that no break of bulk, stoppage or interruption by the carrier, unless made in good faith for some necessary purpose without intention to evade the act, shall prevent the carriage of freights from being treated as one continuous carriage from the place of shipment to the place of destination.

While under these provisions it may be said that Congress has made it obligatory to provide proper facilities for interstate carriage of freight, and has prevented carriers from obstructing continuous shipments on interstate lines, we look in vain for any regulation of the matter here in controversy. There is no sanction of agreements of this character limiting liability to stipulated valuations, and, until Congress shall legislate upon it, is there any valid objection to the State enforcing its own regulations upon the subject, although it may to this extent indirectly affect interstate commerce contracts of carriage?

It is well settled that the State may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate traffic.

In *M. K. & T. Rwy.* v. *Haber*, (169 U. S. 614–635,) after reviewing previous cases in this court, Mr. Justice Harlan, delivering the opinion of the court, says:

"These cases all proceed upon the ground that the regulation of the enjoyment of the relative rights and the performance of the duties of all persons within the jurisdiction of a State, belong primarily to such State under its reserved power to provide for the safety of all persons and property within its limits; and that even if the subject of such regulation be one that may be taken under the exclusive control of Congress, and be reached by national legislation, any action taken by the State upon that subject that does not directly interfere with rights secured by the Constitution of the United States or by some valid act of Congress, must be respected until Congress intervenes."

In the absence of Congressional legislation upon the subject, an act of the legislature of Alabama, to require locomotive engineers to be examined and licensed by a board to be appointed by the governor for that purpose, was sustained in *Smith* v. *Alabama*, (124 U. S. 465.)

An enumeration of the instances in which this court has sustained the validity of local laws intended to promote the safety and comfort of passengers, employes, persons crossing railroads tracks and adjacent property owners, is given in the opinion by Mr. Justice Brown, in *Cleveland &c. Ry. Co.* v. *Illinois*, (177 U. S. 514–16.)

The case of *Chicago, Milwaukee &c. Ry. Co.* v. *Nolan*, (169 U.S. 133,) is, in our opinion, virtually decisive of the question made upon this branch of the case. In that case cattle were loaded at Rock Valley, Iowa, to be shipped to Chicago. The contract, as here, was for interstate transportation. An injury happened to the drover in charge of the cattle in Iowa, due to the negligence of the transporting company. The shipper had signed a contract providing: "That the company shall in no event be liable to the owner or person in charge of said stock for any injury to his person in any amount not exceeding the sum of $500.00." The company averred and offered to prove that, in view of this limited liability, it had agreed to transport the cattle at a reduced rate. The statute of Iowa provided: "No contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into. (Iowa Code of 1879, sec. 1308.) The trial court charged that the limitation contained in the contract was void, and a verdict of $1,000.00 damages was returned. A judgment on the verdict was affirmed in the Supreme Court of Iowa. In delivering the opinion of this court, Mr. Justice Gray said:

"A carrier exercising his calling within a particular State, although engaged in business of interstate commerce, is answerable, according to the law of the State for acts of nonfeasance or misfeasance committed within its limits. If he fails to deliver the goods to the proper consignee at the right time and place, or if by negligence in transportation he inflicts injury upon the person of a passenger brought from another State, the right of action for the consequent damage is given by the local law. It is equally within the power of the State to prescribe the safeguards and precautions foreseen to be necessary and proper to prevent by anticipation those wrongs and injuries which, after they have been inflicted, the State has the power to redress and punish. The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate the relative rights and duties of all persons and corporations within its limits. . . . The statute now in question, so far as it concerns liability for injuries happen-

ing within the State of Iowa—which is the only matter presented for decision in this case—clearly comes within the same principles. It is in no just sense a regulation of commerce. It does not undertake to impose any tax upon the company, or to restrict the persons or things to be carried, or to regulate the rate of tolls, fares, or freight. Its whole object and effect are to make it more sure that railroad companies shall perform the duty, resting upon them by virtue of their employment as common carriers, to use the utmost care and diligence in the transportion of passengers and goods."

It is true that this language was used of a statute of Iowa enacting a rule of obligation for common carriers in that State. But the principle recognized is that in the absence of Congressional legislation upon the subject, a State may require a common carrier, although in the execution of a contract for interstate carriage, to use great care and diligence in the carrying of passengers and transportation of goods, and to be liable for the whole loss resulting from negligence in the discharge of its duties.

We can see no difference in the application of the principle based upon the manner in which the State requires this degree of care and responsibility, whether enacted into a statute or resulting from the rules of law enforced in the State courts. The State has a right to promote the welfare and safety of those within its jurisdiction by requiring common carriers to be responsible to the full measure of the loss resulting from their negligence, a contract to the contrary notwithstanding. This requirement in the case just cited is held not to be an unlawful attempt to regulate interstate commerce in the absence of Congressional action providing a different measure of liability when contracts, such as the one now before us, are made in relation to interstate carriage. Its pertinence to the case under consideration renders further discussion unnecessary.

The judgment of the Supreme Court of Pennsylvania is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.